IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

MONDAY, THE 16TH JULY 2007 / 25TH ASHADHA 1929

WP(C).No. 21705 of 2007(H)

OS.811/2006 of I ADDL.M.C.,ERNAKULAM

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PETITIONER:

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1. DEW MARY DEVASSY, AGED 27 YEARS,
D/O.N.P.DEVASSY, NADUMUTTATH HOUSE,CHEMBUMUKKU,
THRIKKAKARA PANCHAYATH,VAZHAKKALA VILLAGE, KANAYA-
NNUR TALUK, EKM DT.REP.BY HER FATHER AND P/AHOLDER
N.P.DEVASSY, AGED 61, RESIDING AT -DO-, DO-.

2. N.P.DEVASSY, AGED 61 YEARS, S/O.PAPPU,
NADUMUTTATH HOUSE, CHEMBUMUKKU,
THRIKKAKARA PANCHAYATH,VAZHAKKALA VILLAGE,
KANAYANNUR TALUK, ERNAKULAM DISTRICT.

3. PHILOMINA DEVASSY, 56 YEARS,
W/O.N.P.DEVASSY, NADUMUTTATH HOUSE,
CHEMBUMUKKU, THRIKKAKARA PANCHAYATH,
VAZHAKKALA VILLAGE, KANAYANNUR TALUK,
ERNAKULAM DISTRICT.

BY ADV. SRI.K.S.BABU
SMT.N.SUDHA
SRI.ANTONY MATHEW
SMT.C.SEENA

RESPONDENTS:

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1. C.V.KURIAN, AGED 59 YEARS, S/O.VARKEY,
CHIRAPPATT HOUSE, CHEMBUMUKKU, THRIKKAKARA,
PANCHAYATH, VAZHAKKALA VILLAGE, KANAYANNUR TALUK.'
ERNAKULAM DISTRICT.

2. MARIAMMA, AGED 55 YEARS, W/O. THOMAS,
VADAKEPARAMBIL HOUSE, CHEMBUMUKKU, THRIKKAKARA
PANCHAYATH, VAZHAKKALA VILLAGE, KANAYANNUR TALUK.
ERNAKULAM DISTRICT.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 16/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.N.KRISHNAN, J.

WP(C)No. 21705 OF 2007 H

Dated this the 16th July, 2007.

JUDGMENT

This writ petition is filed seeking to set aside the orders passed by the court below in the form of Exts.P5 and P6. By Ext.P1 order dated 15.2.2007 as there was no representation for the plaintiff and as the counsel for the plaintiff was absent and as the balance court fee was not paid the court rejected the plaint and posted the counter claim on 12.3.2007. The petitioner filed Ext.P3 application whereby he has requested the court to restore the plaint on the file of the court by reviewing the order dated 15.2.2007. It is true that the proper method of filing the application was to do it as contemplated under Order XLVII of the Civil Procedure Code. But a reading of the petition would show that the intention of the petitioner was only to get the order rejecting the plaint reviewed. But unfortunately wrong provisions of law had been quoted and court fee to be paid for a review under Order XLVII CPC has not been paid. But the intention to get the order reviewed is very much there in the petition and the prayer also shows that the plaintiff wants to get the order dated 15.2.2007 reviewed so that he can pay the court fee and proceed with the plaint. The learned Munsiff

was right when he held that court fee has not been paid and there is misquoting of the provisions in the petition. But after all what is to be looked into is the substance and I am satisfied that the very prayer is only for the purpose of reviewing the order rejecting the plaint. If there are defects which are curable it must be permitted to be cured and as far as possible opportunity should be given so that the plaint is not rejected on a technical ground of non-payment of court fee when the plaintiff really wants to pursue the matter. Therefore the orders under challenge are set aside and the learned Munsiff is directed to restore Ext.P3 application and give an opportunity to pay the court fee for reviewing the order and then consider it sympathetically and pass appropriate orders. Writ petition is disposed of accordingly.

M.N.KRISHNAN
Judge

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